

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
GARY & JESSICA KRUEGER ZONE CHANGE REQUEST
ZONING MAP AMENDMENT REPORT (#FZC-15-03)
MAY 14, 2015**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Gary & Jessica Krueger for a zoning map amendment in the Highway 93 North Zoning District. The proposed amendment would change the zoning of the subject property from 'AG-40 Agricultural' to 'SAG-5 Suburban Agricultural.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on June 10, 2015 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 First Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment. Documents pertaining to the zoning map amendment are available for public inspection at the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the June 10, 2015 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

Gary & Jessica Krueger
805 Church Drive
Kalispell, MT 59901

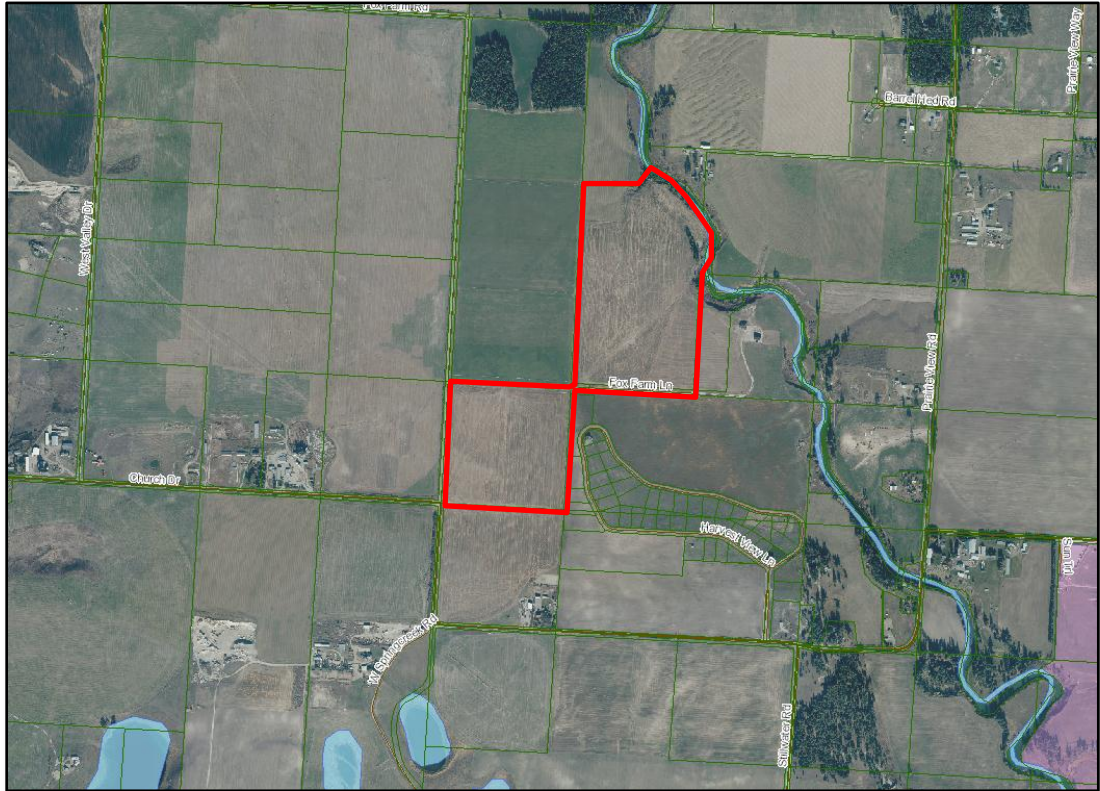
ii. Technical Assistance

Erica Wirtala w/
Sands Surveying, Inc.
2 Village Loop
Kalispell, MT 59901

B. Subject Property Location and Legal Description

The subject property upon which a zoning map amendment has been requested consists of two parcels totaling 109.45 acres. The tracts do not have physical addresses, but are generally located northeast of the intersection of Church Drive and Fox Farm Road, are shown in Figure 1 below, and the property can be legally described as Assessor's Tracts 5 and 6A in Section 11, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. The two tracts are hereafter referred to as the "subject property."

Figure 1: Subject property (outlined in red).



C. Proposed Zoning Map Amendment

The subject property is located within the Highway 93 North Zoning District and is currently zoned “AG-40 Agricultural” (see Figure 2 below). The AG-40 designation is defined in Section 3.05 of the Flathead County Zoning Regulations (FCZR) as, “A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.”

As depicted in Figure 3 below, the applicant has requested a zoning map amendment to “SAG-5 Suburban Agricultural” zoning. The SAG-5 designation is defined in Section 3.08 FCZR as, ‘A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.’

[illegible][illegible]

D. General Character of and Reason for Amendment

The subject property is 109.45 acres located on gently sloping, open land that is currently used for agriculture (as shown in Figure of 1 earlier in this report). The subject property slopes gradually downward to the northeast with a change in elevation of approximately 38 vertical feet over 4,400 horizontal feet from the southwest corner of the subject property at the intersection of Fox Farm Road and Church Drive to the Stillwater River at the northeast corner. There are no structures on the subject property.

The applicant is requesting a zoning map amendment to change the zoning on the subject property from AG-40 to SAG-5. The zoning map amendment, if approved, will decrease minimum lot sizes from 40 acres to five acres, eliminate some rural permitted uses and increase the number of conditional uses requiring review through the conditional use permit process. According to the application, the proposed amendment is necessary because “The current zone limits the use of the property with a 40-acre minimum lot size. The owner would like to create some smaller lots at some point in the future for retirement income.”

E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the boundaries of the Highway 93 North Zoning District and is also adjacent to the West Valley Zoning District (see Figure 2 earlier in this report). The property is bordered on the north and west by “AG-40 Agricultural,” on the west by “WV West Valley,” on the south by “SAG-5 Suburban Agricultural” and “WV West Valley,” and on the east by “AG-40 Agricultural” and “SAG-5 Suburban Agricultural.” Given the scale of the landscape and distances travelled for resident’s daily interactions in this part of Flathead County, staff felt that examining an approximately two-mile radius from the subject property incorporated the character of the area. The character of the area around the property within an approximately two-mile radius is a mixture of rural and urban land uses and densities in a centrally-located part of the Flathead Valley. Land uses are generally large agricultural fields and active farming operations with interspersed residential land uses at varying densities, including urban densities within the northernmost limits of the City of Kalispell. Large acreage commercial land uses including a race track and a commercial arena are located east of the subject property and a restaurant and retail complex also exist to the northeast of the subject property, both accessed from US Highway 93.

It is worth noting that two other zoning map amendments have occurred near the subject property within the last 10 years. In 2004, a zoning map amendment on 458 acres to the east and northeast of the subject property from AG-40 to SAG-5 (the same change as is currently requested) was approved by the Flathead County Commissioners (file #FZC-04-03). A similar zoning map amendment request off of Prairie View Road was reviewed and partially approved in 2008. Only a portion of that zoning map amendment request was approved (file #FZC-08-07) because a part of the subject property was designated “landfill transition zone” in the Riverdale Neighborhood Plan and a portion of the requested zoning did not comply with the plan.

There are two major subdivisions near the subject property that have been developed with a zoning similar to that which is being requested. A 45-lot cluster subdivision called Harvest View Subdivision with an overall gross density of 3.48 acre lots that was final platted in 2008 is immediately southeast of the subject property. A 5-lot minor subdivision called Barrel Hed Acres that created four 5-acre lots and one 7.35-acre lot was final platted in 2006 and is northeast of the subject property.

Properties within two miles of the subject property vary in size from high-density Kalispell city lots in the Silverbrook development to the southeast, to medium-sized residential lots just under one acre in size within the rural Harvest View cluster subdivision to the south, to large agricultural tracts ranging from 40 acres to nearly 160 acres in size to the south, west and north.

Zoning classifications within two miles of the subject property vary widely and include B-2 General Business and I-1H Light Industrial-Highway along Highway 93 to the east, R-1 Residential to the northeast, West Valley (a residential zone) to the west, AG-40 Agricultural, SAG-10 and SAG-5 Suburban Agricultural to the north, northeast and east, and City of Kalispell R-2, R-4 and B-1 PUD to the southeast.

When a change of land use designation is requested (in this case AG to SAG) the “three part test” for spot zoning established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application.

i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.

The requested SAG-5 zoning classification would allow for several uses that are dissimilar to what is allowed within the current AG-40, and would change the minimum lot size from 40 acres to five acres. Generally the SAG-5 zoning has fewer permitted uses (uses allowed without review by the county) than the AG-40 zoning, but has more land uses listed as conditional uses (uses requiring conditional use permit review to determine appropriateness on a case by case basis). SAG-5 zoning allows by conditional use permit more large-acreage commercial uses like golf courses, driving ranges, commercial kennels, high impact recreational facilities, arenas and RV parks. SAG-5 zoning also allows minimum lot sizes of five acres. Existing residential densities of approximately five acres that are similar to what the proposed zoning would allow can be found in the area of the proposed zone change. Harvest View Subdivision with an overall gross density of 3.48 acre lots, Barrel Hed Acres with four 5-acre lots, and various pieces of tract land at five acres or less (such as along Lone Coyote Trail to the west) can all be found in the area of the proposed zoning. Finally, the proposed SAG-5 zoning already exists covering over 450 acres adjacent to the subject property. Therefore, the proposed zoning would allow uses and densities that do not significantly differ from the prevailing uses and densities in the area.

ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.

The proposed zoning map amendment involves 109.45 acres owned by one landowner. As shown in Figure 3 earlier in this report, the proposed SAG-5 zoning is adjacent to 458 acres that was changed to SAG-5 by five landowners in 2004. Considering the overall size of the Highway 93 North Zoning District and the adjacent West Valley Zoning District, the presence of a large similarly zoned area adjacent to the proposed zoning, as well as the mix of tract and lot sizes and land uses in the area around the proposed zoning map amendment, the proposed zoning does not stand out as applying to an unreasonably or noticeably small area. The proposed zoning is at the request of and does benefit only one separate landowner (Gary and Jessica Krueger) so since this portion of the three part test for spot zoning is a small area OR a small number of landowners, the proposed zoning map amendment appears to meet this portion of the test.

iii. The Zoning Is Designed To Benefit Only One Or A Few Landowners At The Expense Of The Surrounding Landowners Or The General Public And, Thus, Is In The Nature Of Special Legislation.

The proposed zoning amendment is at the request of one landowner, but is a request to change the zoning to a classification that is already present in the area and adjacent to the subject property. As shown in Figure 3 earlier in this report, the subject property upon which the change to SAG-5 zoning is proposed is adjacent to 458 acres that are already zoned SAG-5 and was changed to SAG-5 from AG-40 by five landowners in 2004. The requested SAG-5 zoning classification therefore allows uses and lot sizes that are already contemplated for future development by a relatively large area of adjacent zoning. Additionally, the permitted and conditional uses and bulk and dimensional requirements in the existing AG-40 zoning classification and the proposed SAG-5 zoning classification are similar to the current prevailing uses and lot sizes in the area of the proposed zoning map amendment (see Section II(E) earlier in this report). The Riverdale Neighborhood Plan contemplates the appropriate densities for this area and designates the subject property as “Residential Suburban (2.5-5 Acres/DU).” The proposed SAG-5 zoning is therefore on the low-end of the density range for this property. A more detailed analysis of the Riverdale Neighborhood Plan appears later in this report. Lastly, the public services and infrastructure currently in place at this central location in the Flathead Valley are appropriate to support the suburban agricultural land uses and density of the SAG-5 zoning classification. For a more thorough analysis of public services and infrastructure, see Section IV later in this report. Therefore, although the proposed zoning map amendment is at the request of one landowner, a change to the requested zoning classification on the subject property would not be at the expense of the surrounding landowners or the general public.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #1: The proposed zoning map amendment from AG-40 to SAG-5 is not at high risk of being determined by a court to be “spot zoning” because it does not meet all three parts of the three part test established by the Montana Supreme Court in *Little v. Board of County Commissioners Flathead County* to determine whether a zoning amendment constitutes spot zoning.

F. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District #44 Whitefish High School District
Fire:	West Valley Fire District
Police:	Flathead County Sheriff’s Office

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on May 13, 2015. Legal notice of the May 18, 2015 Riverdale Land Use Advisory Committee meeting and the June 10, 2015 Planning Board public hearing on this application was published in the May 17, 2015 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in 76-2-205 M.C.A. Notice of the Commissioner’s public hearing will also be published once a week for two weeks in the legal section of the Daily Interlake. All methods of public notice will include information on the boundaries of the proposed zoning map amendment, the general character of the proposed zoning map amendment and the date, time, and location of the public hearing.

I. Agency Referrals

Referrals were sent to the following agencies on April 08, 2015 with a request to comment by April 22, 2015:

- Bonneville Power Administration

- Reason: BPA has requested that anytime agency referrals are sent they receive a copy.
- Montana Fish, Wildlife, and Parks
 - Reason: Increased development as a result of the zoning map amendment may impact wildlife in the area.
- Flathead City-County Health Department; Environmental Health Services
 - Reason: Increased development as a result of the zoning map amendment may necessitate review by the Department.
- Flathead County Public Works/Flathead County Road Department
 - Reason: The zone change request has the potential to impact County infrastructure.
- Flathead County Sheriff
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing services.
- Flathead County Solid Waste
 - Reason: The type and amount of solid waste resulting from uses permitted within the proposed zone change could have an impact on existing public services.
- Flathead County Weeds and Parks Department
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services and facilities.
- Whitefish School District #44
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.
- Whitefish High School District
 - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing school services.
- West Valley Fire District
 - Reason: The subject property is located within the jurisdiction of the local fire district and increased development as a result of the zoning map amendment could impact the level of service available.
- Kalispell Planning Department
 - Reason: Although the subject property is outside the Kalispell Growth Policy and Annexation Policy boundaries, given the proximity to Kalispell city limits an opportunity for comment is appropriate.
- Whitefish Planning Department
 - Whitefish has historically expressed interest in growth and development in rural Flathead County between Kalispell and Whitefish.
- Montana Department of Natural Resources and Conservation
 - The subject property abuts floodplain and utilizes irrigation so an opportunity to comment on floodplain matters or water rights is appropriate.

III. COMMENTS RECEIVED

A. Public Comments

Typically draft staff reports are finalized to allow for peer review and editing approximately 12-13 working days prior to the Planning Board public hearing. However, due to scheduling requirements of the Riverdale Land Use Advisory Committee (RLUAC), this staff report was finalized to allow for peer review and editing as of 5:00 p.m. on May 14, 2015 so that a final version could be emailed to the RLUAC on May 15, 2015 prior to that group's meeting on May 18, 2015. As of the date this staff report was finalized for peer review (5:00 p.m. on May 14, 2015), one public comment had been received regarding the requested zoning map amendment.

1. A telephone inquiry from Angela Tollerson, owner of 101 Fox Farm Lane, the property to the east of the subject property. Angela called to ask questions because when she bought her property she understood the zoning to be AG-40 and has concerns with any changes to that zoning.

Any member of the public or a public agency wishing to provide comment on the proposed zoning map amendment may do so at the RLUAC meeting scheduled for May 18, 2015, the Planning Board public hearing scheduled for June 10, 2015 and/or the Commissioner's hearing, for which a date will be set after a recommendation is made by the Planning Board. Any written comments received following the finalizing of this staff report will be collected and presented and summarized to the RLUAC (if received prior to 5:00 p.m. on May 18, 2015) and the Flathead County Planning Board (if received prior to 5:00 p.m. on June 10, 2015). After a recommendation from the Planning Board, all public comments will be forwarded to the Flathead County Commissioners prior to their legally required public hearing.

B. Agency Comments

The following is a summarized list of agency comment received as of the date this staff report was finalized:

- Flathead County Weed, Parks and Recreation
 - Comment: A field inspection of the subject property was conducted on April 20, 2015. A letter to the landowner and a copy of a Weed Inspection Report was mailed to the landowner and our office was cc'd as an agency referral. According to the cover letter that accompanied the report, "It is the landowners' responsibility to control noxious weeds on their land – MCA Section 7-22-2116. A noxious weed is legally defined as 'any exotic plant species that may render land unfit for agriculture, forestry, livestock, wildlife or other beneficial uses, or that may harm native plant communities.' Most noxious weeds thrive when soil is disturbed. Some can grow from root parts, as well as seeds that become exposed." The cover letter references a subdivision but no subdivision of land is taking place presently. The cover letter recommends a weed prevention plan, similar to language found in the report. According to the Weed Inspection Report, weeds were present on the subject property and a weed management plan is required. It is unclear if this plan is required due to the proposed zone change or if it is required if the property is

subdivided in the future or if it is required by the landowner simply because there are weeds present. Subsequent email correspondence between planning staff and the Weed Department indicates that they provided the landowner with assistance in completing the Weed Management Plan (a standard service provided to landowners) and the plan has been completed for the subject property.

- Flathead City-County Health Department
 - Comment: No comment at this time regarding the proposed zone change. However, “If the parcels are further divided into parcels less than 20 acres, they are subject to review under the Sanitation in Subdivisions Act. Review would be completed before the certificate of survey or subdivision plan could be filed.” Letter dated 03/05/15.
- Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated 04/09/15.
- Bonneville Power Administration
 - Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time.” Email dated April 13, 2015
- Montana Fish, Wildlife and Parks (FW&P)
 - Comment: FW&P provided comment that the subject property does provide habitat and a movement corridor for wildlife. The riparian area on the subject property, the agricultural fields, proximity to nearby ponds and seasonal wetlands to the west and large contiguous nature of the property all are reasons cited by FW&P that the property is valuable. The agency comment does not condemn the requested zone change, but makes requests in the form of “Development Considerations” to mitigate impacts on wildlife and wildlife habitat. These requests include:
 - Clustering future development in general to protect habitat,
 - A 250-foot naturally vegetated buffer, plus an additional 50-foot building setback,
 - Clustering development specifically to mitigate impacts to ungulate winter range and working with FW&P biologists when laying out lot lines in the future,
 - Restricting the presence of wildlife attractants,
 - Providing educational brochures to future landowners,
 - A request to make all future land owners within this SAG-5 zoning aware of eight recommendations including awareness of animals damaging vegetation, fencing fruit trees, securing garbage, not feeding wildlife, properly storing pet food, using fencing that can allow for wildlife movement, fencing compost piles, and properly housing domestic animals that wildlife might eat.

It is worth noting here that the proposed zoning map amendment can't be conditioned to require these recommendations be implemented as part of the zoning map amendment. Typically the recommendations of FW&P are considered at subdivision review and implemented as deemed appropriate by the Planning Board and Commissioners through conditions of preliminary plat approval and required statements on the face of the final plat to inform future lot buyers. Since this is not a subdivision, the comments from FW&P will simply need to be incorporated by the Planning Board and Commissioners into the overall consideration of the appropriateness of the requested zoning map amendment at this particular time for the subject property.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have land uses that are allowed by-right. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those by-right uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from "AG-40 Agricultural." AG-40 is defined in Section 3.05 FCZR as, "*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.*" The following is a list of permitted uses in an "AG-40 Agricultural" zone:

1. Agricultural/horticultural/silvicultural use.
2. Cellular tower.
3. Class A and Class B manufactured home.
4. Cluster housing.
5. Dairy products processing, bottling, and distribution.
6. Day care home.
7. Dwelling, single-family.
8. Dwelling unit, accessory (ADU).
9. Guest house.
10. Fish hatchery.
11. Home occupation.
12. Homeowners park and beaches.

13. Kennel.
14. Livestock.
15. Nursery, landscaping materials.
16. Park.
17. Produce stand.
18. Public transportation shelter station.
19. Public utility service installation.
20. Ranch employee housing.
21. Riding academy, rodeo arena.
22. Stable, public and private.

The following uses are listed as conditional uses in an “AG-40 Agricultural” zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airport.
2. Animal Farm
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker’s facility.*
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Communication tower/mast.
10. Community center building operated by a non-profit agency.
11. Contractor’s storage yard.*
12. Dwelling, family hardship.*
13. Electrical distribution station.
14. Extractive industry.
15. Feed and seed processing and cleaning.
16. Feed lot: cattle, swine, poultry.
17. Landfill, sanitary for disposal of garbage and trash.
18. Radio and television broadcast studio.
19. Recreational facility, low-impact.
20. Rifle Range.
21. School, primary and secondary.
22. Temporary building or structure.*
23. Water and sewage treatment plant.
24. Water storage facility.

The bulk and dimensional requirements in the AG-40 zoning requires a setback for the principal structure from boundary lines of 20 feet from the front, rear, side and side-corner. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. Additionally there are provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The maximum allowable building height is 35 feet for all structures (agricultural buildings are exempt) and the permitted lot coverage is 20%. The subject property is approximately 109.45 acres and a minimum lot area of 40 acres is required under the current AG-40 zoning. The subject property could mathematically be subdivided into two lots or tracts under the current zoning. Under this development scenario, it is unlikely that any gross acreage would be lost to requirements of the subdivision regulations (such as access, lot layout, floodplain, etc.). Utilization of bonus densities scenarios through clustering or a Planned Unit Development (PUD) would be unlikely in the AG-40 zoning for 109.45 acres.

ii. Proposed Zoning

As previously stated, the applicant is proposing “SAG-5 Suburban Agricultural” zoning. SAG-5 is defined in Section 3.08.010 FCZR as, “*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*” The following is a list of permitted uses in a SAG-5 zone:

1. Agricultural/horticultural/silvicultural use.
2. Class A and Class B manufactured home.
3. Cluster housing.
4. Day care home.
5. Dwelling, single-family.
6. Dwelling unit, accessory (ADU).
7. Guest house.
8. Home occupation.
9. Homeowners park and beaches.
10. Livestock.
11. Nursery, landscaping materials.
12. Park and publicly owned recreational facility.
13. Produce stand.
14. Public transportation shelter station.
15. Public utility service installation.
16. Stable, private.

The following uses are listed as conditional uses in an SAG-5 zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker’s facility.*
7. Cellular tower.*
8. Cemetery, mausoleum, columbarium, crematorium.

9. Church and other place of worship.
10. Community center building operated by a non-profit agency.
11. Community residential facility.**
12. Contractor's storage yard.*
13. Dwelling, family hardship.*
14. Electrical distribution station.
15. Extractive industry.
16. Golf course.
17. Golf driving range.
18. Kennel, commercial.*
19. Manufactured home park.
20. Recreational facility, high-impact.
21. Recreational facility, low-impact.
22. Recreational vehicle park.
23. Riding academy and rodeo arena.
24. School, primary and secondary.
25. Stable, public.
26. Temporary building or structure.*
27. Water and sewage treatment plant.
28. Water storage facility.

The bulk and dimensional standards under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner yards for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner yards and 5 feet from the rear and side yards. The zoning designation also allows for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-5 zoning has a minimum lot area of 5 acres. The maximum allowable building height is 35 feet for all structures and the permitted lot coverage is 25%. The subject property totals 109.45 acres therefore mathematically under the proposed SAG-5 zoning 21 lots could be created on the subject property. In a standard SAG-5 development scenario, the actual number of lots created may be slightly less due to access, lot layout, environmental and/or infrastructure requirements of the Flathead County Subdivision Regulations. However, density bonuses of either 150% of the standard number of dwelling units could be allowed under residential clustering provisions found in Section 5.09 of the Flathead County Zoning Regulations or two dwelling units per five acres if a development was a Planned Unit Development (PUD) per Section 3.31 of the Flathead County Zoning Regulations. All of these maximum build-out development scenarios would require review and approval of a subdivision, and a PUD would also require zoning review.

In summary, the bulk and dimensional requirements are similar in AG-40 and SAG-5 with the exception of minimum lot size, maximum height of structures and permitted

lot coverage. The requested zone change from AG-40 to SAG-5 does increase permitted density on the subject property by allowing additional lots through subdivision or utilization of an exemption to subdivision, such as family transfer. Since five-acre parcels would be allowed under the proposed SAG-5 zoning, it is important to contemplate whether or not five-acre parcels are appropriate for the subject property based on the criteria for zoning found in Section B below.

The SAG-5 zone allows for a variety of different uses from what is currently allowed under the existing AG-40. Generally the SAG-5 zoning has fewer permitted uses (uses allowed without review by the county) than the AG-40 zoning, but has more land uses listed as conditional uses (uses requiring conditional use permit review to determine appropriateness on a case by case basis). SAG-5 zoning allows by conditional use permit more large-acreage commercial uses like golf courses, driving ranges, commercial kennels, high impact recreational facilities, arenas and RV parks. Conditional Use Permits are required for these uses to allow for site-specific evaluations of proposed land uses.

In other words, all areas zoned SAG-5 are deemed as appropriate locations for those uses listed as “permitted” so no site specific review is required, but those uses listed as “conditional uses” have been determined to possibly be appropriate, depending on the site-specific circumstances. Those circumstances are the criteria for reviewing a Conditional Use Permit, found in Section 2.06 of the Flathead County Zoning Regulations. Therefore, the more potentially impactful land uses contemplated within the SAG-5 zone will be reviewed in the future to determine if the site-specific circumstances are appropriate at the time and in the manner proposed by the developer and if adequate mitigation of impacts is proposed by the developer.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

Flathead County Growth Policy

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Agricultural.’ The requested Suburban Agricultural zoning classification would appear to contrast with the current Agricultural designation. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, *“This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document.”*

The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Therefore, staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
- ❖ **G.3** – *Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and management and allowing a flexibility of private land use that is economically and environmentally viable to both the landowner and Flathead County.*
 - The SAG-5 designation continues to allow for agriculture, but also allows a greater diversity of private land uses (many of which are reviewed for location-specific impacts through the CUP process) in a historically agricultural but transitioning area of the Flathead valley.
- **P.3.5** – *Identify reasonable densities for remote, rural development that do not strain the provision of services or create a public health or safety hazard.*
 - Five acre lots would not require public water and sewer and Church Drive is a County collector capable of handling increased traffic. Fox Farm Road is a gravel road, but development densities that may negatively impact the first ¼ mile of Fox Farm Road would likely trigger the off-site road improvement requirements of the Flathead County Subdivision Regulations. Additionally, no negative responses from public service providers have been provided.
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*
 - The SAG-5 designation allows for agriculture and forestry, but provides the land owner with more flexibility when it comes to a minimum lot area.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*

- The SAG-5 designation would allow for densities of one dwelling unit per five acres and would not require paved roads or public water, sewer and storm water services. The subject property is in an area already transitioning to suburban agricultural land uses and densities so the requested amendment is not out of character with the area. See Section IV.A earlier in this report.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - An agency referral was mailed to both Whitefish High School and Whitefish School District #44 on April 08, 2015. No comments were received from either district, therefore there is no evidence to indicate the proposal would adversely impact area school districts. Further discussion on how the proposed zoning map amendment furthers the provision of schools and other public requirements can be found in Section B.ii.3 later in this report.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - Agency referrals were sent to the Flathead County Sheriff and the West Valley Fire District on April 08, 2015. No comments were received from either agency, so there is no evidence to indicate the proposal would adversely impact emergency services. This report contains additional discussion on the adequacy of emergency service in Section B.ii.1 and B.ii.2 below.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, the ‘Agriculture’ land use designation identified by the Designated Land Use Map does not appear to be compatible with the proposed zoning the map but that map only portrays zoning which was established at the time the map was created and the map is therefore not a future land use map, paved roads, public water and sewer service are not required for SAG-5 zoning, Church Drive is a county collector capable of accommodating increased traffic associated with the proposal and if the property is developed to a density that may negatively impact the first ¼ mile of Fox Farm Road it will likely trigger the off-site road improvement requirements of the Flathead County Subdivision Regulations.

Riverdale Neighborhood Plan

The subject property is also within the jurisdiction of the Riverdale Neighborhood Plan, adopted on February 21, 2008 (Resolution #2015D). Staff has reviewed the text, policies and maps of that plan. The Riverdale Neighborhood Plan specifically states that the future of the area is a “predominantly small and large parcel residential neighborhood, coupled with business and neighborhood commercial land use categories” (Page 13). Unlike the Flathead County Growth Policy, the Riverdale Neighborhood Plan does contain a “Future Land Uses” map

(Map #9). The Future Land Use map specifically designates the subject property as “Residential Suburban (2.5 – 5 Acres/DU)” and Policy 1.6 encourages the development of larger, estate lots. The text describing the Residential Suburban land use designation states on page 30 that commercial land uses are not appropriate. However, the text also states that the SAG-5 zoning district is consistent with the Residential Suburban land use designation.

The Riverdale Neighborhood Plan states in many places that just because an area is designated a certain way on the Future Land Use map, any request for a zone change must determine if the infrastructure and services are in place to support the proposed zoning. Unlike the higher density range of the Residential Suburban land use designation (2.5 acre lots), the requested SAG-5 zoning does not require paved roads, nor are public water or sewer services required for any density in the Residential Suburban designation. Policy 12.5 states that all roads within the plan area shall be paved by developers as development occurs, but the proposed zoning map amendment would not qualify as “development.” Off-site road improvement requirements may be required at the time of subdivision and/or review of a PUD or Conditional Use Permit, depending on the impacts of the proposed development.

Overall, given the transitioning nature of this area of the Riverdale Neighborhood Plan (see Figure #2 earlier in this report) and the mixture of residential lot and tract sizes in the area (which complies with Goal #1 of the Riverdale Neighborhood Plan) and the large-acreage, rural character commercial uses allowed in the SAG-5 zoning, it would appear that the requested zoning map amendment generally complies with the Riverdale Neighborhood Plan.

Finding #3: The requested zoning map amendment to SAG-5 appears to comply with the Riverdale Neighborhood Plan because the character of the area around the subject property is consistent with a one to 80 acre residential and business and neighborhood commercial land use, the proposed SAG-5 zoning is consistent with the lowest density of the density range contemplated and established for the subject property in Map #9 Future Land Use, and given the transitioning nature of densities and land uses on adjacent properties and in the area of the proposed zoning map amendment, services and infrastructure are appropriate to support five acre lots in this area at this time.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the West Valley Fire District and is equidistant (approximately 5 road miles) from three existing rural fire stations. This distance from three fire stations is consistent with other areas of the county for providing fire services and therefore seems reasonable for the proposed SAG-5 zoning. The applicant does not appear to have contacted the West Valley Fire District, but an agency referral was sent on April 08, 2015

and no response has been received indicating concern with the proposed zoning map amendment.

The subject property is not located within the Wildland Urban Interface and only a small portion on the north of the subject property is mapped as “County Wide Priority Area” for fuels reduction. It is not immediately clear why the north side of the property falls within an area for fuels reduction. The property is primarily an open field with some trees located on the north and northeast in the riparian area adjacent to the Stillwater River. Since there were no comments from the local fire district, and staff can’t identify any obvious fire hazards in the area, it is reasonable to conclude that the proposed zoning would not create a fire safety hazard.

The subject property is located off Church Drive, with a portion of the property accessed off Fox Farm Road. Church Drive is a paved two lane County road within a 70 foot easement and is classified as a collector road. Fox Farm Road is a gravel two lane county road within a 70 foot easement and is classified as a local road. Both roads appear adequate to provide ingress and egress for emergency services. If the property were to be developed at a density that may introduce impacts (more than a few family transfer tracts), the subdivision regulations require off-site road improvements proportional to the impacts of development. A more detailed discussion of the provision of transportation can be found in Section 3 later in this report.

The subject property is located on FEMA FIRM Panel on 30029C1415G and is primarily designated as Zone X, areas determined to be outside the 0.2% annual chance floodplain. The Stillwater River, adjacent to the subject property on the north and northeast, is designated as Zone A, or 1% Annual Chance Flood Hazard area. Future development of the subject property is unlikely to be in the floodplain area due to the 20’-30’ embankment. However, development along the top of the bank is always possible since many landowners seek the best views of the river as possible. Large lots, such as five acres, created through subdivision review, do provide an opportunity that 1) fewer overall lots will be created along the top of the river bank and 2) lots will be arranged so as to have a larger area to accommodate safety setbacks from the top of the bank.

Finding #4: The proposed map amendment would secure safety from fire and other dangers because the property is located within a reasonable distance from three fire stations, the property is not located in a WUI and fuels reduction does not appear to be a necessity at this time, the majority of the property is mapped as Zone X (an area determined to be outside the 0.2% annual chance floodplain), a portion mapped Zone A (an area within the 1% annual chance floodplain) is confined due to topography to an area immediately adjacent to the Stillwater River and five acre lots created through

subdivision review allow opportunity to ensure space for safety setbacks at the top of the bank of the Stillwater River.

2. Promote public health, public safety, and general welfare;

As discussed in the previous section, the subject property is within the West Valley Fire District and is approximately 5 road miles from three separate fire stations. The property is accessed from Church Drive, a paved county collector road and Fox Farm Road, a gravel county local road. Any development to a density that would likely create impacts to off-site roads will trigger the off-site improvement requirements of the Flathead County Subdivision Regulations. Any subdivision of land, through either an exemption to the Montana Subdivision and Platting Act (such as family transfer) or through subdivision review would be required to undergo review for compliance with the Sanitation in Subdivision Act, ensuring protection of public health with regard to water, wastewater and storm water.

The SAG-5 zoning classification would allow for some uses that are different from what is allowed within the current AG-40. Within the AG-40 zone ‘Dairy products processing, bottling, and distribution,’ ‘Fish hatchery,’ and ‘Ranch employee housing’ are permitted uses but not allowed in SAG-5. Four uses are permitted outright in AG-40 but require issuance of a Conditional Use Permit (CUP) in SAG-5, they include:

- ‘Cellular tower,’
- ‘Kennel,’
- ‘Riding Academy, rodeo arena’
- ‘Stable, public,’

There are five uses allowed in the AG-40 with a CUP that are not allowed at all in the SAG-5, these are:

- ‘Animal farm,’
- ‘Communication tower/mast,’
- ‘Feed and seed processing and cleaning,’
- ‘Feed lot: cattle, swine, poultry,’ and
- ‘Radio and television broadcast studio.’

There are seven uses allowed in the SAG-5 with a CUP that are not allowed in the AG-40, they include:

- ‘Aircraft hangars when in association with properties within or adjoining an airport/landing field,’
- ‘Community residential facility,’
- ‘Golf course,’
- ‘Golf driving range,’
- ‘Manufactured home park,’
- ‘Recreational facility, high impact,’ and
- ‘Recreational vehicle park.’

The proposed SAG-5 zone has the same uses that are allowed within in the existing and adjoining SAG-5 zoning. As was discussed earlier in this report, the densities and land uses permitted in the proposed SAG-5 zoning also

already exist within the area around the subject property. A cluster subdivision that has a gross density of less than five acre lots, a range of lot and tract sizes from one acre to 80 acres, agricultural, large-acreage commercial and residential land uses all exist near the subject property in this centrally located portion of the Flathead Valley. Furthermore, most land uses with the greatest potential to impact neighbors are listed as Conditional Uses in the SAG-5 zoning. Conditional Use Permit review specifically reviews impacts of a proposed use based on the unique attributes of the land and area in which it is proposed. This review ensures mitigation of potential negative impacts, or may even result in denial if a location simply isn't appropriate based on noncompliance with the criteria for review or the applicant's inability to adequately demonstrate compliance with the criteria.

Finding #5: The proposal would not have a negative impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department and three fire stations are within approximately five road miles of the subject property, the Flathead County Sheriff's Office serves the subject property, future development would be reviewed for conformance with the Sanitation in Subdivision Act, ensuring appropriate water, wastewater and storm water, future development would be similar to uses and densities already in the area and the proposed SAG-5 zone would require location-specific review through the CUP process of the most potentially impactful land uses to ensure mitigation of negative impacts.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

It is anticipated that actual future development would include subdivision review, at which time specific impacts to transportation, water and sewer services would be considered and mitigated as determined to be appropriate. Family transfers would be exempt from review under the Montana Subdivision and Platting Act, but would still be reviewed under the Sanitation in Subdivision Act to ensure appropriate water, wastewater and storm water facilities. This zone change request is also an opportunity to assess if the property and public infrastructure could handle impacts associated with the proposed zone change.

Access to the subject property is currently via Church Drive which is a paved two lane County collector located within a 70 foot easement. The nearest recent traffic counts by the Flathead County Road and Bridge Department are from June 2012 and indicate 766 average daily trips (ADT) on Church Drive just south of Prairie View Road. A portion of the subject property is accessed from Fox Farm Road, a gravel two lane county local road in a 70' easement. Fox Farm Road traffic counts are from June of 2012 and indicate 28 ADT just north of Church Drive, adjacent to the subject property. If the property was split using family transfer, the minimal number of tracts created would add a relatively small amount of traffic to both of these roads. If the property was

subdivided, the impacts to road infrastructure would be reviewed and would likely trigger off-site roadway improvement requirements. An ADT of 28 for Fox Farm Road is so low that most subdivision activity using Fox Farm for access would likely trigger off-site improvements based on the direct impact formula used in the Flathead County Subdivision Regulations.

Comments received from the Flathead County Road and Bridge Department stated, “At this point the County Road Department does not have any comments on this request.” It is anticipated that because traffic would only increase by a minimal amount if additional tracts were created through an exemption and a larger number of lots would be reviewed as a subdivision and would likely require off-site roadways improvements, and because the Road and Bridge Department had no comment, the proposed zoning map amendment would still facilitate the adequate provision of transportation.

The subject property is currently undeveloped. The applicant (or whomever may develop the subject property) will be required to work with Flathead City-County Health Department to develop an on-site well and sewer system to meet the needs of any future development. Comments received from the Flathead City-County Health Department states, “If the parcels are further subdivided into parcels less than 20 acres, they are subject to review under the Sanitation in Subdivisions Act (Title 76.4.1). Review would be completed before the certificate of survey or subdivision plat could be filed.” Further subdivision of the property into parcels less than 20 acres would require Sanitations in Subdivisions Act review regardless of whether it is reviewed under the Montana Subdivision and Platting Act.

The subject property is located within the Whitefish School District #44 and Whitefish High School District. According to the 2014 Statistical Report of Schools, Whitefish Elementary Schools have seen a decrease of 9% in student enrollment over the last ten years. Whitefish High School has seen a decrease of 31% in student enrollment over the last ten years. No comments were received from the Whitefish School District #44 or the Whitefish High School District. The applicant states that Whitefish Middle School and High School have recently had expansions and upgrades and cites that as an indication of adequate public facilities to accommodate any growth that results from the proposed zoning map amendment.

The zoning map amendment would change the current 40-acre minimum lot size to a smaller 5-acre minimum lot size. It is anticipated subsequent future development would require review and parkland may only be required at that time if the lots created would be five gross acres in size and not larger. Larger lots (greater than 5.00 acres) would not trigger parkland dedication requirements. Cluster subdivisions would also likely not require parkland dedication since open space preservation qualifies for a waiver of parkland dedication. However, there are many parks, natural areas, and recreational

opportunities within a short drive and the property is not likely to effect the adequate provision of parkland. According to the applicant, “Children can take advantage of growing up in this paradise to ride bikes, or horses, swim, fish, build tree forts or play in the mud.”

Finding #6: The proposed zoning map amendment would facilitate the adequate provision of transportation because Church Drive is a paved two lane County collector and Fox Farm is a gravel two lane County local road both with relatively low existing traffic volumes given the quality of each road, future subdivision that creates a number of lots that may impact existing road infrastructure will likely trigger off-site roadway improvements due to these relatively low existing traffic volumes, and the County Road Department had no comments regarding this proposal.

Finding #7: The proposal appears to not hinder the adequate provision of water, sewer, schools and parks because future development will require further review from the Montana Department of Environmental Quality and the Flathead City-County Health Department, the proposal may generate school-aged children but would likely not impact schools due to historic declines in enrollment and recent improvements in school facilities, no comments were received from the school districts and there are numerous parks, natural areas, and recreational opportunities in the vicinity.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The proposed zoning map amendment has the potential to increase development density on the subject property. The bulk and dimensional requirements for the proposed SAG-5 zone are similar to the bulk and dimensional requirements for existing AG-40 with the exceptions being minimum lot size, building height restrictions and permitted lot coverage. The proposed SAG-5 zoning allows for eight times the density of the existing AG-40 zoning and the lot coverage for SAG-5 is 25% versus 20% for AG-20. Agricultural structures are exempt from building height restrictions in the existing AG-40 zoning.

Any new structures on additional lots created as a result of this proposed zone change would be required to meet the setbacks, maximum height, permitted lot coverage and minimum lot area requirements of the SAG-5 classification. The proposed SAG-5 zoning sets a maximum building height of 35 feet for all structures, the permitted lot coverage is 20% and the minimum lot area is 5 acres. The setback requirements in the proposed SAG-5 require a minimum of 20 feet for the front, rear, side and side-corner yards for principal structures and 20 feet for the front and side-corner yards and 5 feet for the side and rear yards for accessory structures. These bulk and dimensional requirements

within the SAG-5 designation have been established to ensure a reasonable provision of light and air.

Finding #8: The proposed zone change would ensure the reasonable provision of light and air for development on the subject property because future development would be required to meet all bulk and dimensional requirements within the proposed SAG-5 designation including; setbacks, maximum height and permitted lot coverage requirements, and 5 acre lots will not restrict the adequate provision of light and air.

2. The effect on motorized and non-motorized transportation systems;

Access to the subject property is currently via Church Drive which is a paved two lane County collector located within a 70 foot easement. Recent traffic counts by the Flathead County Road and Bridge Department from June 2012, indicate 766 average daily trips (ADT) on Church Drive just south of Prairie View Road. A portion of the subject property is accessed from Fox Farm Road, a gravel two lane county local road in a 70' easement. Fox Farm Road traffic counts are from June of 2012 and indicate 28 ADT just north of Church Drive, adjacent to the subject property. If the property was split using family transfer, the effect on motorized transportation systems (county roads) would be a minimal number of tracts created which would add a relatively small amount of traffic to both of these roads. If the property was subdivided, the impacts to road infrastructure would be reviewed and would likely trigger off-site roadway improvement requirements. An ADT of 28 on Fox Farm Road is so low that subdivision activity using Fox Farm for access would likely trigger off-site improvements based on the direct impact formula used in the Flathead County Subdivision Regulations. For example, if the property was fully subdivided into five acre lots, 21 single-family homes may be introduced to this area. Using the direct impact formula found in Section 4.7.17(i)(ii) of the Flathead County Subdivision Regulations, a subdivision of this nature would be required to improve 88% of the unpaved length of the primary access road. Comments received from the Flathead County Road and Bridge Department stated, "At this point the County Road Department does not have any comments on this request." It is anticipated that because traffic would only increase by a minimal amount if additional tracts were created through an exemption and a larger number of lots would be reviewed as a subdivision and would likely require off-site roadways improvements, and because the Road and Bridge Department had no comment, the proposal would have no negative effect on motorized transportation systems.

Currently, there are no existing bike/pedestrian facilities located along Church Drive or Fox Farm Road. Future development will not be required to provide sidewalks due to the SAG-5 density. Bicycle path easements will not be required since neither Church Drive nor Fox Farm Road are identified in the Flathead County Trails Plan Appendix M Proposed Trail Network. Therefore

there is no impact on non-motorized transportation systems because none exists and none are planned for the area.

Finding #9: It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Church Drive is a paved county collector road capable of accommodating traffic impacts associated with the proposed zone change, Fox Farm Road is a gravel county local road and can accommodate a small number of additional trips if the property is split using an exemption to subdivision review and due to low traffic counts will likely be improved if the subject property is subdivided, the Road and Bridge Department has no comment regarding the proposal and there will be no impact to non-motorized transportation systems because the area has no is not planned for bicycle or pedestrian facilities.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell, the northernmost city limits of which are 1.8 road miles east of the subject property. The downtown core of the City of Kalispell is located approximately 9 road miles away, to the south. Although the northernmost city limits of Kalispell are within the area of the proposed zoning map amendment, the Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2009, only extends to the south side of Church Drive (see Figure 4 later in this report). The subject property is located on the north side of Church Drive and therefore not included in the future land use map. Since the City of Kalispell has not included the subject property in their Growth Policy, staff can reasonably conclude that the city has not determined what would be compatible for the subject property with the city's future growth in this area. The proposed zoning is similar to the SAG-5 zoning found to the south and east of the subject property on lands that are within the Growth Policy boundaries, so the city is likely at least familiar with county SAG-5 zoning. The City of Kalispell adopted an Annexation Policy in March of 2011. The subject property is not included in the Annexation Policy Map. A request for agency comments was sent to the City of Kalispell on April 08, 2015 and as of the finalizing of this staff report, no comment has been received.

Finding #10: The proposed zoning map amendment would not affect urban growth in the vicinity of Kalispell because the map amendment is located outside the boundaries of both the Future Land Use Map and Annexation Policy Map adopted by the City of Kalispell, and no comments were provided by the City of Kalispell regarding the proposed zoning map amendment, indicating the city has no significant concerns with compatibility of the proposed zoning amendment.

4. The character of the district(s) and its peculiar suitability for particular uses;

The subject property is located within the boundaries of the Highway 93 North Zoning District and is also adjacent to the West Valley Zoning District (see Figure 2 earlier in this report). The property is bordered on the north and west by “AG-40 Agricultural,” on the west by “WV West Valley,” on the south by “SAG-5 Suburban Agricultural” and “WV West Valley,” and on the east by ‘AG-40 Agricultural’ and “SAG-5 Suburban Agricultural.” The character of the area around the property within an approximately two-mile radius is a mixture of rural and urban land uses in this centrally-located part of the Flathead Valley. Land uses are generally large agricultural fields and active farming operations with interspersed residential land uses at varying densities, including urban densities within the northernmost limits of the City of Kalispell. Commercial land uses including a race track and a commercial arena are located east of the subject property and a restaurant and retail uses also exist to the northeast of the subject property, both accessed from US Highway 93.

It is worth noting again that two other zoning map amendments have occurred near the subject property within the last 10 years. In 2004, a zoning map amendment on 458 acres to the east and northeast of the subject property from AG-40 to SAG-5 (the same change as is currently requested) was approved by the Flathead County Commissioners (file #FZC-04-03). A similar zoning map amendment request off of Prairie View Road was reviewed and partially approved in 2008. Only a portion of that zoning map amendment request was approved (file #FZC-08-07) because a part of the subject property was designated “landfill transition zone” in the Riverdale Neighborhood Plan and a portion of the requested zoning did not comply with the plan.

The area was described in an agency comment from Montana Fish, Wildlife and Parks as being “significant habitat” and movement corridor for wildlife species. The impacts to wildlife and wildlife habitat of those SAG-5 land uses that require a Conditional Use Permit and future subdivision activity would require review and consideration of roughly proportional and appropriate mitigation measures at the time of development. Agency comments from Montana Fish, Wildlife and Parks regarding the proposed zoning map amendment provide site-specific development recommendations that can’t be implemented or required as part of a zoning map amendment. However, these recommendations, taken from a document entitled “Fish and Wildlife Recommendations for Subdivision Development in Montana,” can be implemented as appropriate as the property is developed in the future.

Based on the existing character of the district and the area around the subject property, the proposed SAG-5 zoning allows uses that are suitable. As discussed earlier in this report, many of the most potentially impactful land uses in the SAG-5 zone require site specific review through the Conditional

Use Permit process. This review process ensures that land uses are suitable at a specific location and offers a significant level of public participation to determine if a proposed use will unacceptably alter the character of a district. This process helps to ensure that uses that are generally suited for the character of the overall district are in fact also suited for a particular property at the time and in the manner that they are proposed.

Finding #11: The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed SAG-5 zoning are similar to what is currently allowed and existing in the area of the proposed zoning map amendment, the Conditional Use Permit review process allows for those uses that are potentially more impactful to be reviewed on a case-by-case basis to determine if the use is suited to the property at the time and in the manner it is proposed and subdivision and conditional use permit review can consider and mitigate impacts to wildlife and wildlife habitat.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Previous sections of this report have detailed the differences between permitted and conditional uses in the existing AG-40 zoning and the proposed SAG-5 zoning. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed SAG-5 zoning are already found in the area of the proposed zoning map amendment, or would not be out of character at all with the existing uses (examples include manufactured homes, single family dwellings, day care homes, private stables, livestock and agricultural land uses). These uses would not impact the value of buildings and would be appropriate land uses in this part of the Flathead Valley. The land uses listed in the SAG-5 zoning that have the highest potential to impact neighbors and the value of buildings if not developed appropriately are on the list of conditional uses requiring public review through the Conditional Use Permit process (examples include churches, extractive industries, golf courses, kennels, high impact recreational facilities and public stables). This review process ensures the mitigation of negative impacts, or potentially the outright denial of a proposed land use if it is deemed by the Board of Adjustment to be noncompliant with the criteria for review. The proposed SAG-5 zoning contemplates land uses that are reasonable to consider for this area of the Flathead Valley based on the existing character of the district and the level of public services and infrastructure present on the subject property. Additionally, the conditional use permit process ensures the most appropriate use of the subject property (and all zoned properties) on a case by case basis at the time and in the manner the property is proposed for development.

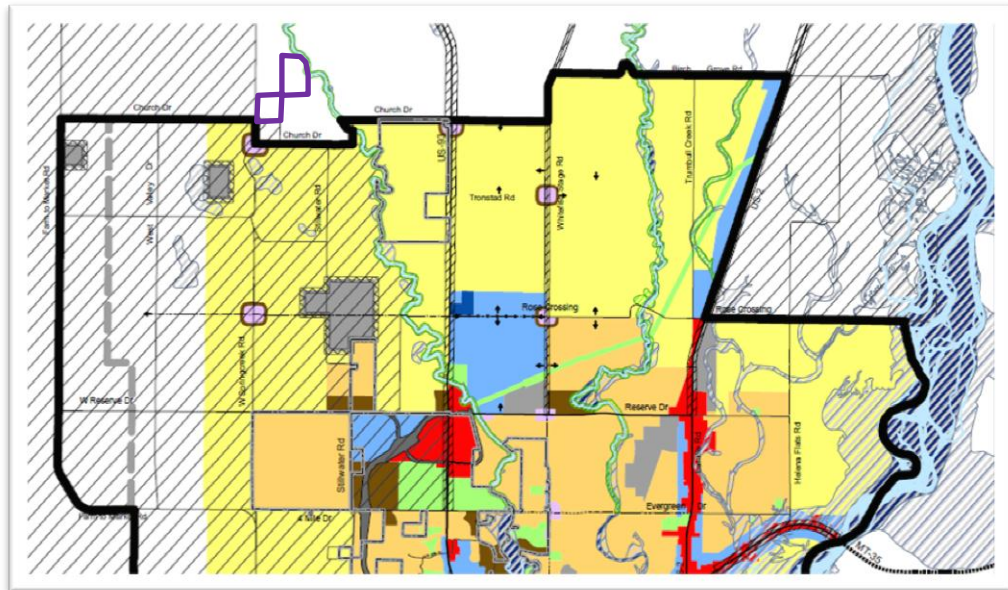
Finding #12: The proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land because the SAG-5 zoning is a common zone already used in this area of the Flathead Valley, many uses allowed as permitted uses in the SAG-5 zoning are already present in the area of the subject property and are therefore appropriate and would not harm the value of existing buildings, and those uses listed as conditional uses would undergo a public process of review to ensure development is appropriate to the particular property at the time and in the manner it is proposed.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell, the northernmost city limits of which are 1.8 road miles east of the subject property. The downtown core of the City of Kalispell is located approximately 9 road miles away, to the south. Although the city limits are within the area of the proposed zoning map amendment, the Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2009, only extends to the south side of Church Drive (see Figure 4 later in this report). The subject property is located on the north side of Church Drive and therefore not included in the future land use map. Additionally, the City of Kalispell adopted an Annexation Policy in March of 2011 and the subject property is not included in the Annexation Policy Map.

Since the City of Kalispell has not included the subject property in their Growth Policy or Annexation Map, staff can reasonably conclude that the city has not determined what would be compatible with the city's future growth in this area. The City of Kalispell does not have a 5-acre, suburban agricultural zoning classification for properties within city limits, presumably because the land uses are too rural and the density is too low for typical urban development. Zoning classifications that are listed in the Kalispell Zoning Regulations are all far too dense and too intensive for the subject property. The proposed SAG-5 zoning is the same as county SAG-5 zoning found to the south and east of the subject property on lands that are within the City of Kalispell Growth Policy boundaries, so the city is likely at least familiar with the proposed county SAG-5 zoning and what uses and densities are common in these areas. A request for agency comments was sent to the City of Kalispell on April 08, 2015 and as of the finalizing of this staff report, no comment has been received.

Figure 4: Northern portion of City of Kalispell Growth Policy Future Land Use Map (Property outlined in purple)



Finding #13: The subject property is outside the city limits, outside the Growth Policy area and outside the Annexation Policy area of the City of Kalispell and Kalispell does not have a rural, 5-acre density suburban agricultural zoning classification so it is not possible for the proposed zoning map amendment to be compatible with the zoning ordinances of Kalispell because no documents exist that would provide guidance on compatibility and the city has not responded to a request for agency comment on the proposed zoning map amendment.

V. SUMMARY OF FINDINGS

Finding #1: The proposed zoning map amendment from AG-40 to SAG-5 is not at high risk of being determined by a court to be “spot zoning” because it does not meet all three parts of the three part test established by the Montana Supreme Court in *Little v. Board of County Commissioners Flathead County* to determine whether a zoning amendment constitutes spot zoning.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request, the ‘Agriculture’ land use designation identified by the Designated Land Use Map does not appear to be compatible with the proposed zoning the map but that map only portrays zoning which was established at the time the map was created and the map is therefore not a future land use map, paved roads, public water and sewer service are not required for SAG-5 zoning, Church Drive is a county collector capable of accommodating increased traffic associated with the proposal and if the property is developed to a density that may negatively impact the first ¼ mile of Fox Farm Road it will likely trigger the off-site road improvement requirements of the Flathead County Subdivision Regulations.

Finding #3: The requested zoning map amendment to SAG-5 appears to comply with the Riverdale Neighborhood Plan because the character of the area around the subject property is consistent with a one to 80 acre residential and business and neighborhood commercial land use, the proposed SAG-5 zoning is consistent with the lowest density of the density range contemplated and established for the subject property in Map #9 Future Land Use, and given the transitioning nature of densities and land uses on adjacent properties and in the area of the proposed zoning map amendment, services and infrastructure are appropriate to support five acre lots in this area at this time.

Finding #4: The proposed map amendment would secure safety from fire and other dangers because the property is located within a reasonable distance from three fire stations, the property is not located in a WUI and fuels reduction does not appear to be a necessity at this time, the majority of the property is mapped as Zone X (an area determined to be outside the 0.2% annual chance floodplain), a portion mapped Zone A (an area within the 1% annual chance floodplain) is confined due to topography to an area immediately adjacent to the Stillwater River and five acre lots created through subdivision review allow opportunity to ensure space for safety setbacks at the top of the bank of the Stillwater River.

Finding #5: The proposal would not have a negative impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department and three fire stations are within approximately five road miles of the subject property, the Flathead County Sheriff's Office serves the subject property, future development would be reviewed for conformance with the Sanitation in Subdivision Act, ensuring appropriate water, wastewater and storm water, future development would be similar to uses and densities already in the area and the proposed SAG-5 zone would require location-specific review through the CUP process of the most potentially impactful land uses to ensure mitigation of negative impacts.

Finding #6: The proposed zoning map amendment would facilitate the adequate provision of transportation because Church Drive is a paved two lane County collector and Fox Farm is a gravel two lane County local road both with relatively low existing traffic volumes given the quality of each road, future subdivision that creates a number of lots that may impact existing road infrastructure will likely trigger off-site roadway improvements due to these relatively low existing traffic volumes, and the County Road Department had no comments regarding this proposal.

Finding #7: The proposal appears to not hinder the adequate provision of water, sewer, schools and parks because future development will require further review from the Montana Department of Environmental Quality and the Flathead City-County Health Department, the proposal may generate school-aged children but would likely not impact schools due to historic declines in enrollment and recent improvements in school facilities, no comments were received from the school districts and there are numerous parks, natural areas, and recreational opportunities in the vicinity.

Finding #8: The proposed zone change would ensure the reasonable provision of light and air for development on the subject property because future development would be required to meet all bulk and dimensional requirements within the proposed SAG-5 designation including; setbacks, maximum height and permitted lot coverage requirements, and 5 acre lots will not restrict the adequate provision of light and air.

Finding #9: It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Church Drive is a paved county collector road capable of accommodating traffic impacts associated with the proposed zone change, Fox Farm Road is a gravel county local road and can accommodate a small number of additional trips if the property is split using an exemption to subdivision review and due to low traffic counts will likely be improved if the subject property is subdivided, the Road and Bridge Department has no comment regarding the proposal and there will be no impact to non-motorized transportation systems because the area has no is not planned for bicycle or pedestrian facilities.

Finding #10: The proposed zoning map amendment would not affect urban growth in the vicinity of Kalispell because the map amendment is located outside the boundaries of both the Future Land Use Map and Annexation Policy Map adopted by the City of Kalispell, and no comments were provided by the City of Kalispell regarding the proposed zoning map amendment, indicating the city has no significant concerns with compatibility of the proposed zoning amendment.

Finding #11: The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed SAG-5 zoning are similar to what is currently allowed and existing in the area of the proposed zoning map amendment, the Conditional Use Permit review process allows for those uses that are potentially more impactful to be reviewed on a case-by-case basis to determine if the use is suited to the property at the time and in the manner it is proposed and subdivision and conditional use permit review can consider and mitigate impacts to wildlife and wildlife habitat.

Finding #12: The proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land because the SAG-5 zoning is a common zone already used in this area of the Flathead Valley, many uses allowed as permitted uses in the SAG-5 zoning are already present in the area of the subject property and are therefore appropriate and would not harm the value of existing buildings, and those uses listed as conditional uses would undergo a public process of review to ensure development is appropriate to the particular property at the time and in the manner it is proposed.

Finding #13: The subject property is outside the city limits, outside the Growth Policy area and outside the Annexation Policy area of the City of Kalispell and Kalispell does not have a rural, 5-acre density suburban agricultural zoning classification so it is not possible for the proposed zoning map amendment to be compatible with the zoning ordinances of Kalispell because no documents exist that would provide guidance on

compatibility and the city has not responded to a request for agency comment on the proposed zoning map amendment.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: BJ